

# APPELLATE ADVOCACY FOR YOUTH COURT DEFENDERS

March 2022

Presented by:

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Director of the Indigent Appeals Division

Office of State Public Defender

Appellate advocacy begins in the trial court before, during and after trial. Issues for appellate review must be preserved and created. On rare occasion, an issue can be reviewed as plain error if not otherwise reserved.

## **APPEALS FROM YOUTH COURT**

§ 43-21-651. Review by supreme court

(1) The court to which appeals may be taken from final orders or decrees of the youth court shall be the Supreme Court of Mississippi. In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the youth court clerk within the time, and costs in the youth court and the filing fee in the Supreme Court shall be paid, as is otherwise required for appeals to the Supreme Court. If the appellant shall make affidavit that he is unable to pay such costs and filing fee, he shall have an appeal without prepayment of court costs and filing fee. Only the initials of the child shall appear on the record on appeal.

(2) The pendency of an appeal shall not suspend the order or decree of the youth court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child shall have been committed, unless the youth court or Supreme Court shall so order. If appellant desires to appeal with supersedeas, the matter first shall be presented to the youth court. If refused, the youth court shall forthwith issue a written order stating the reasons for the denial, which order shall be subject to review by the Supreme Court. If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify or reverse the order of the youth court and remand the child to the jurisdiction of the youth court for placement and supervision in accordance with its order, and thereafter the child shall be and remain under the jurisdiction of the youth court in the same manner as if the youth court had made the order without an appeal having been taken.

(3) Appeals from the youth court shall be preference cases in the Supreme Court.

## **YOUTH COURT RULE 37 APPEALS FROM FINAL ORDERS OR DECREES**

Appeals from final orders or decrees of the court shall be pursuant to the Mississippi Rules of Appellate Procedures.

### **Comments & Procedures**

Only the initials of the child shall appear on the record on appeal. See *In re R.R.B.*, 394 So. 2d

907, 908 (Miss. 1981) (“[Section 43-21-651] is mandatory that nowhere on the records of this

Court or the appellate records or briefs or other proceedings should the minor's name appear, only his or her initials.”).

## **WHO SHOULD FILE THE APPEAL?**

If trial counsel intends for the Indigent Appeals Division to take over an appeal, the youth court trial counsel should perfect the appeal. Appellate Rule 6 states that appointed trial counsel remains counsel until relieved by order of the trial court or appellate court.

Once the appeal is perfected and the issue of supersedeas is decided by the trial court, and after the appeal is docketed at the Supreme Court, trial counsel should file a motion, in the appellate court, to withdraw and substitute counsel to have the Indigent Appeals Division (IAD) handle the case thereafter.

### **Procedure for substituting IAD in on an appeal.**

1. Obtain authorization from Youth Court for an In Forma Pauperis appeal
2. Optional - File motion in Youth Court to stay disposition pending appeal (MRAP Rule 8 (b) and § 43-21-651 (2)).
3. File Notice of Appeal in the Youth Court (MRAP Rule 4)
4. File Designation of the Record in the Youth Court (MRAP Rule 10(b)(1))
5. File Certificate of Compliance in the Youth Court (MRAP Rule 11(b)(1))
6. When the case gets docketed at the appellate court, move to withdraw and substitute IAD in. (MRAP Rule 6)

## **TIME TO APPEAL**

There is no final appealable order in a delinquency proceeding until the youth court has entered its order of disposition. In *Int. of J.P.C. v. State*, 783 So. 2d 778, 781 (Miss. Ct. App. 2000).

Appellate Rule 4(a) states, “the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from.” See also, *In re A.M.A.*, 986 So. 2d 999, 1006 (Miss. Ct. App. 2007).

Appellate Rule 4 (d) Post-trial Motions in Civil Cases. If any party files a timely motion of a type specified immediately below the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding ... A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

*Do not rely on this – there is no case law, but:*

Appellate Rule 4(f) Parties Under Disability. In the case of parties under a disability of infancy or unsoundness of mind, the various periods of time for which provision is made in this rule and within which periods of time action must be taken shall not begin to run until the date on which the disability of any such party shall have been removed. However, in cases where the appellant infant or person of unsound mind was a plaintiff or complainant, and in cases where such a person was a party defendant and there had been appointed for him or her a guardian ad litem, appeals to the Supreme Court shall be taken in the manner prescribed in this rule within two years of the entry of the judgment or order which would cause to commence the running of the 30 day time period for all other appellants as provided in this rule.

Enlargements of the thirty-day period are available under MRAP 4(g) and 4(h) depending on the circumstances.

## **SUPERSEDEAS**

In re G.L.H., 843 So. 2d 109, 114–15 (Miss. Ct. App. 2003)

To appeal with supersedeas, the appellant “was required to immediately appeal the decision of the trial court refusing his motion to appeal supersedeas to the Mississippi Supreme Court, before proceeding with his appeal on the merits.” The supreme court could have then reviewed the order of the youth court and determined if the judge abused his discretion. Since G.L.H did not do this, his claim on this issue is procedurally barred.”

## **POTENTIAL ISSUES TO PRESERVE**

### **Sufficiency Of Evidence**

J.P.C. v. State, 783 So. 2d 778 (Miss. Ct. App. 2000) reversed and rendered.

**Legal Decisions of the trial judge which are non-discretionary.**

**Discretionary decisions which reflect an abuse of discretion.**

“On appeal, J.T.'s parents primarily claim that the State has failed to prove that J.T. was sexually abused. But, even if the State produced sufficient evidence, the parents argue that the State's case rested entirely on inadmissible hearsay—which also violated their right to confront witnesses—and the improper expert testimony of unqualified witnesses. We find that the State failed to produce sufficient evidence to prove that J.T. had been sexually abused.” In re J.T., 188 So. 3d 1192, 1196 (Miss. 2016).

### **Otherwise**

In reviewing an adjudication of delinquency, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found beyond a reasonable doubt that the child committed the delinquent act. See In re L.M., 600 So. 2d 967, 969 (Miss. 1992); In re S.B., 566 So. 2d 1276, 1278 (Miss. 1990). In Int. of J.P.C. v. State, 783 So. 2d 778, 781 (Miss. Ct. App. 2000).

In reviewing an adjudication of abuse or neglect, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found by a preponderance of the evidence that the child was abused or neglected. See *In re M.R.L.*, 488 So. 2d 788, 791 (Miss. 1986)

Forms provided below.

# Forms

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_ [optional] \_\_\_\_\_

**MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS**

Comes now *{client's name}*, by and through *{his/her}* attorney of record, and files this Motion for Leave to Appeal in Forma Pauperis and in support thereof, would show the following:

That on *{enter date of appointment order}* *{client's name}* was determined by this Court to be indigent and Movant was appointed to represent *{him/her}* in the above referenced cause.

Wherefore, Premises Considered, Movant would respectfully request this honorable Court to grant this motion and allow the Minor to appeal in forma pauperis.

RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of \_\_\_\_\_. 20\_\_\_\_\_.

*{Client's Name}*, A Minor,

BY: \_\_\_\_\_  
*{Attorney's name}*, Attorney for Minor



**CERTIFICATE OF SERVICE**

I, {Attorney's name}, attorney of record for {client's name}, do hereby certify that I have, this day, filed this Motion for Leave to Appeal in Forma Pauperis with the clerk of this Court and have served a true and correct copy of the above and foregoing motion by first class United States mail, postage prepaid, on the following persons at these addresses:

{Name and Address of Youth Court Judge}

{Name and Address of Youth Court Prosecutor}

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
{Attorney's Name}, Attorney for Minor

{Name, Bar Number and contact Information of Attorney}

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_ [optional] \_\_\_\_\_

**MOTION TO FIND MINOR INDIGENT AND  
FOR LEAVE TO APPEAL IN FORMA PAUPERIS**

Comes now *{client's name}*, by and through *{his/her}* attorney of record, and files this Motion to Find Minor Indigent and for Leave to Appeal in Forma Pauperis and in support thereof, would show the following:

That the minor [and *{his/her}* parent(s)/guardian(s)] *{is/are}* without sufficient funds to employ counsel to appeal this cause.

Wherefore, Premises Considered, Movant would respectfully request this honorable Court to grant this Motion and find *{client's name}*, a minor, indigent and allow *{him/her}* to appeal in forma pauperis.

RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of \_\_\_\_\_. 20\_\_\_\_\_.

*{Client's Name}*, A Minor,

BY: \_\_\_\_\_  
*{Attorney's name}*, Attorney for Minor

## **CERTIFICATE OF SERVICE**

I, {Attorney's name}, attorney of record for {client's name}, do hereby certify that I have, this day, filed this Motion to Find Minor Indigent and for Leave to Appeal in Forma Pauperis with the clerk of this Court and have served a true and correct copy of the above and foregoing motion by first class United States mail, postage prepaid, on the following persons at these addresses:

{Name and Address of Youth Court Judge}

{Name and Address of Youth Court Prosecutor}

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

---

{Attorney's Name}, Attorney for Minor

{Name, Bar Number and contact Information of Attorney}

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_ [optional] \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS**

I, {NAME OF CLIENT} and {NAME OF CLIENT'S PARENT OR GUARDIAN},  
parent/guardian of {NAME OF CLIENT}, request that this Honorable Court allow {NAME OF  
CLIENT} to proceed without prepayment of costs and declare that {NAME OF CLIENT} is  
unable to pay the fees and is entitled to proceed as a Pauper. In support thereof, we would show  
the following to-wit:

That {CLIENT'S NAME} is a child of \_\_\_\_\_ years, whose birth date is  
\_\_\_\_\_.

That {CLIENT'S NAME} receives income, if any, in the amount of \$ \_\_\_\_\_ per  
week/month/year.

That {CLIENT'S NAME} has \$ \_\_\_\_\_ in a checking and/or savings  
account, located at \_\_\_\_\_ bank.

That all other assets are listed below:

1) \_\_\_\_\_

2) \_\_\_\_\_

\_\_\_\_\_  
{CLIENT'S NAME}, a MINOR

\_\_\_\_\_  
{CLIENT'S PARENT/GUARDIAN}

State of Mississippi

County of \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said jurisdiction, the within named Petitioner, who, after first being by me duly sworn, stated on oath that the statements set forth in the above and foregoing are true and correct as herein stated.

SWORN TO AND SUBSCRIBED before me, this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_ [optional] \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS**

I, [Name of Client's Parent(s) or Guardian(s)] , parent/guardian of [Client's Name], a minor, requests this Honorable Court to allow my child to proceed without prepayment of costs and declare that I am unable to pay the fees and am entitled to proceed as a Pauper. In support thereof, I would show the following, to-wit:

1. I receive income, if any, in the amount of \$ \_\_\_\_\_ per  
week/month/year.

2. I have the amount of \$ \_\_\_\_\_ in a checking and/or savings account,  
located at \_\_\_\_\_ bank.

3. All of my other assets, such as real estate, bonds, notes, etc., are listed below:

a. \_\_\_\_\_

b. \_\_\_\_\_

\_\_\_\_\_  
(Minor's Parent(s)/Guardians)

STATE OF MISSISSIPPI

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said jurisdiction, the within named Petitioner, who, after first being by me duly sworn, stated on oath that the statements set forth in the above and foregoing are true and correct as therein stated.

SWORN AND SUBSCRIBED before me, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_ [optional] \_\_\_\_\_

**NOTICE OF APPEAL**

By this notice, [Client's name] , the minor in the above-styled and numbered cause, pursuant to Miss. Code Ann. Section 43-21-651 and Rules 3 and 4 of the Mississippi Rules of Appellate Procedure, hereby appeals to the Supreme Court of Mississippi from the adjudication order entered on [date] and disposition order entered on [date] in this action. Notice is hereby further given that this appeal is In Forma Pauperis, pursuant to M.R.A.P. Rule 6(a)(2).

Respectfully submitted,  
[Client's Name], A Minor

BY: \_\_\_\_\_  
[Attorney's Name], Attorney for Minor

**CERTIFICATE OF SERVICE**

I, [Attorney's Name], Counsel for, [Client's Full Name], do hereby certify that I have, this day, filed this Notice of Appeal with the clerk of this Court and have served a true and correct copy of the above and foregoing Notice of Appeal by first class United States mail, postage prepaid, on the following persons at these addresses:

[Name and Address of Youth Court Judge]



[Name and Address of Youth Court Prosecutor]

[Name and Address of Court Reporter(s)]

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

[Attorney's Name], Attorney for Minor

[Name, Bar Number and Contact Information of Attorney]

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_ [optional] \_\_\_\_\_

**MOTION TO APPEAL WITH SUPERSEDEAS**

COMES NOW [Client's Full Name], by and through his/her counsel, [Attorney's Name], and pursuant to Section 43-21-651(2) of the Mississippi Code Annotated, moves this Court to stay the disposition of the Court from [date of disposition order]. In support thereof, the minor will show the following:

(1) A Notice of Appeal has been filed in this matter.

(2) It would be in the Minor's best interest for the Court to immediately stay the disposition order pending the appeal to the Mississippi Supreme Court in this case.

RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[Client's Name], A Minor

By: \_\_\_\_\_  
[Attorney's Name], Attorney for Minor

**CERTIFICATE OF SERVICE**

I, [ Attorney's Name], Counsel for, [Client's Full Name ], do hereby certify that I have, this day, filed this MOTION TO APPEAL WITH SUPERSEDEAS with the clerk of this Court and have served a true and correct copy of the above and foregoing motion by first class United States mail, postage prepaid, on the following persons at these addresses:

[Name and Address of Youth Court Judge]

[Name and Address of Youth Court Prosecutor]

This the \_\_\_\_\_ day of \_\_\_\_\_ , 20\_\_\_\_ .

\_\_\_\_\_  
[Attorney's Name], Attorney for Minor

[Name, Bar Number and Contact Information of Attorney]

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_

**DESIGNATION OF RECORD**

[Client's Full Name], the appellant, by counsel, pursuant to M.R.A.P. 10(b)(1),  
designates the following parts of the record as being necessary to be included on appeal:

All clerk's papers, petitions, motions, pleadings, orders, judgments, opinions, motion  
hearing transcripts with exhibits (including transfer hearings), trial transcripts (including opening  
and closing arguments), and all exhibits filed, taken or offered in this case.

RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[Client's Name], A Minor

BY: \_\_\_\_\_  
[Attorney's Name], Attorney for Minor

**CERTIFICATE OF SERVICE**

I, [ Attorney's Name], Counsel for, [Client's Full Name ], do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing Designation of the Record to :

[Name and Address of Youth Court Prosecutor]

[Name and Address of Court Reporter(s)]

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Attorney's Name], Attorney for Minor

[Name, Bar Number and Contact Information of Attorney]

IN THE YOUTH COURT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

In the Interest of

Youth Court Cause No. \_\_\_\_\_

\_\_\_\_\_,  
A Minor (DOB: \_\_\_\_\_)

MYCIDS No. \_\_\_\_\_

**CERTIFICATE OF COMPLIANCE WITH RULE 11(b)(1)**

I, [Attorney's Name], attorney for Minor, [Client's Full Name], pursuant to M.R.A.P. 11(b)(1), certify that I have complied with M.R.A.P. 11(b) and the estimated costs of preparing the designated record on appeal is not being deposited because the appeal being taken in forma pauperis by order of the Youth Court dated [date] pursuant to M.R.A.P. Rule 6(a)(2).

RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[Client's Name], A Minor

By: \_\_\_\_\_  
[Attorney's Name], Attorney for Minor

**CERTIFICATE OF SERVICE**

I, [ Attorney's Name], Counsel for [Client's Name], do hereby certify that I have, this day, filed this CERTIFICATE OF COMPLIANCE with the clerk of this Court and have served a true and correct copy of the above and foregoing motion by first class United States mail, postage prepaid, on the following persons at these addresses:

[Name and Address of Youth Court Prosecutor]

[Name and Address of Court Reporter(s)]

Mr. Jeremy Whitmire  
Supreme Court Clerk  
P. O. Box 249  
Jackson MS 39206

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Attorney's Name], Attorney for Minor

[Name, Bar Number and Contact Information of Attorney]

**IN THE [SUPREME COURT/ COURT OF APPEALS] OF MISSISSIPPI**

IN THE INTEREST OF [Minor's Initials ONLY],  
a MINOR

CASE NO.

**MOTION TO WITHDRAW AND TO SUBSTITUTE COUNSEL**

COMES NOW, [Attorney's Name], and files this Motion to Withdraw and to Substitute Counsel pursuant to M.R.A.P. 6, and in support thereof would show unto the Court the following, to-wit:

1. The Appellant appealed from [his/her] Youth Court disposition order by filing a Notice of Appeal on or about [date].
2. By order of [Youth Court/ Supreme Court ], dated [date], the Appellant was declared to be in forma pauperis. The Appellant remains indigent, and the [Youth Court] has not certified that the Appellant is no longer indigent or is not otherwise entitled to proceed in forma pauperis.
3. Counsel request that [he/she] be allowed to withdraw and the Office of State Public Defender be appointed as counsel of record for the Appellant, **and a new briefing schedule be issued by the Court. {use only if a briefing schedule has already been issued by the Supreme Court Clerk's Office}**.

WHEREFORE PREMISES CONSIDERED, [ Attorney's Name], prays the [he / she] be allowed to withdraw as counsel of record and the Office of State Public Defender be substituted as counsel of record, **and a new briefing schedule be issued by the Court.**



RESPECTFULLY SUBMITTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Client's Name], A Minor

BY: \_\_\_\_\_  
[Attorney's Name], Attorney for Minor

**CERTIFICATE OF SERVICE**

I, [Attorney's Name] do hereby certify that I have this day served a true and correct copy  
of the foregoing Motion to Withdraw and to Substitute Counsel on the following:

Hon. Lynn Fitch  
Mississippi Attorney General  
Post Office Box 220  
Jackson, MS 39205

To the Minor at His/Her Residence  
[Do Not Include Minor's Personal Information on the Certificate of Service]

Hon. George Holmes  
Office of State Public Defender  
P.O. Box 3510  
Jackson, MS 39207-3510

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY: \_\_\_\_\_  
[Attorney's Name], Attorney for Minor

[Name, Bar Number and Contact Information of Attorney]